



**ROD UNDERHILL**, District Attorney for Multnomah County

600 County Courthouse • Portland, Oregon 97204 • 503 988-3162 • FAX 503 988-3643  
www.mcda.us

September 29, 2016

Peter M. Heimlich  
3630 River Hollow Run  
Peachtree Corners, Georgia 30096

Jason Davis  
OHSU – Legal Department  
3181 S.W. Sam Jackson Park – L585  
Portland, Oregon 97239-3098

Re: Petition of Peter Heimlich seeking unredacted emails from Dr. Mark Helfand.

Dear Mr. Heimlich and Mr. Davis:

In his public records petition, dated September 20, 2016, petitioner Peter Heimlich requests this office to order Oregon Health & Science University (OHSU) to disclose copies, in unredacted form, of the following records:

**for the period 9/1/15 to 5/10/16, all emails from OHSU Professor Mark Helfand, M.D. to or from the domains @BMJ or @CSPI.net.org or that contained the keyword “BMJ,” “Teicholz,” “Tieholz,” or “Nina”**

On August 13, 2016, OHSU provided petitioner with 206 pages of documents in response to this request, with certain material and attachments redacted. This petition ensued.

The redactions at issue relate to a September 23, 2015 article published by Nina Teicholz in the British Medical Journal (BMJ) titled “The scientific report guiding the US dietary guidelines: is it scientific?”<sup>1</sup> The article proved controversial and the BMJ subsequently asked Dr. Helfand to review the article for accuracy and recommend if correction or other post-publication action was appropriate by the BMJ. Dr. Helfand has submitted a final draft of his review to the BMJ and it is in the peer review process prior to its eventual publication.

As discussed below, we agree with OHSU that ORS 192.501(14) applies and Dr. Helfand’s notes, drafts, and manuscript are not subject to disclosure at this time.

## DISCUSSION

### A. Faculty Research – ORS 192.501(14)

ORS 192.501(14) conditionally exempts from disclosure,

Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented.

<sup>1</sup> The article appears online at: <http://www.bmj.com/content/351/bmj.h4962>

The purpose of this exemption is to put public university faculty on equal footing with their peers at private institutions. ATTORNEY GENERAL'S PUBLIC RECORDS MANUAL (2014) at 53. The redacted material in this case are notes and drafts of a piece that Dr. Helfand will publish in the BMJ as well as communications so inextricably linked with the content of the piece that their release would disclose the substance of his research. The exemption applies.

The faculty research exemption is a conditional exemption that applies only unless the public interest compels disclosure. We cannot say that the subject of the research in this case is of such urgent and intense public interest that it requires immediate public disclosure. The final draft of the article will eventually be publicly released by the BMJ. Furthermore, OHSU has stated that as soon as the article is published it will release all of the redacted notes, drafts, and other related communications. Petitioner in this case operates a media outlet, a blog and website relating to uncovering medical fraud and misrepresentation. We do not contest his legitimate interest in the subject matter, and the issue underlying Ms. Teicholz and Dr. Helfand's work is certainly of more general interest as well. But this does not provide petitioner the ability to obtain pre-publication articles destined for other publications for his own use or dissemination.

We also note that OHSU's redactions are limited and incisive. As the public records law requires, OHSU has segregated exempt from non-exempt material with precision.

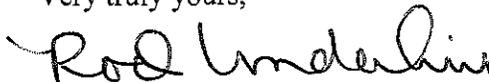
B. Information of a Personal Nature / Medical Records – ORS 192.502(2) / 192.496(1)

Two of the submitted emails, with the subject "Your visit," have redactions to them that do not relate to faculty research. These are discussions relating to a personal medical issue and are exempt from disclosure. In any event, the redacted content is irrelevant to the apparent research interest of petitioner.

**ORDER**

The petition is denied.

Very truly yours,



ROD UNDERHILL  
District Attorney  
Multnomah County, Oregon